REMARKS/ARGUMENTS

The Office Action of August 13, 2009 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 1-21 were pending in the Office Action. Upon entry of the present paper, claims 1-2, 5, 8-9, 11 and 16-21 are amended, claims 3, 4, 6-7, 10 and 12-15 are canceled, and new claims 22-26 are added, resulting in pending claims 1-2, 5, 8-9, 11 and 16-26. No new matter is introduced by these amendments.

The "Medium" Interpretation

The Office opens with a statement about the term "medium," but that term does not appear in Applicants' claims, and Applicants are unable to address this without context.

Art-Based Rejections

Turning to the art-based rejections, claims 1-5, 8-12 and 15-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by Burns et al. (U.S. Patent No. 6,275,496); and claims 6-7, 13-14 and 20-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged combination of Burns et al. and Lloyd et al. (U.S. PGPub 2005/0102297). Applicants respectfully traverse these rejections, especially insofar as they may be applied to the claims as amended.

Independent Claim 18 and Dependent Claims 16-17 and 19-21

A rejection under 35 U.S.C. 102 requires each and every feature to be present in the cited reference, and the references must be arranged as required by the claim. MPEP 2131 ("The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required."). Here, there is no showing in Burns et al. of its predictive caching system determining an availability of access to the central database, and then acting in the event that access is unavailable, as recited in claim 18.

Claim 18, which has been rewritten in independent form, continues to recite the following (emphasis added):

> ... wherein the at least one headend IT infrastructure is programmed to determine an availability of access to the central database, and in the event that access to the central database is unavailable, handle real-time transactions, without real-time access to the central database, in accordance with the policy limits, thereby providing failsoft headend facility operation

In rejecting this claim, the Office contends that Burns et al. shows such a feature, but Burns et al.'s alleged IT infrastructure is not programmed to determine an availability of access to the central database, and act in the event of that unavailability, as recited. In the cited column 8, lines 23-33, Burns et al. simply says that its request handler 111 checks its cache whenever it gets a request for a file. It does not, for example, check first to see if access to the target resource is available, and then load from its cache when the target is unavailable. Indeed, checking the target before checking the cache runs contrary to Burns et al., since checking for access like this would seem to compound the bandwidth and latency issues that Burns et al. seeks to address with its cache.

Granted, the Office also cites Burns et al.'s background, which notes that users sometimes have to wait a few minutes to watch a requested video when bandwidth is low. But that feature, if it is a feature, is not part of the Burns et al. predictive caching system, and is not part of the portion cited in the Action. For example, Burns et al. does not suggest that its system will check to see if the user would have to wait those few minutes, and then if that access is unavailable, load the file from the cache. As noted above, an anticipation rejection requires that the recited elements are arranged in the art in the same way, and here they clearly are not.

For at least these reasons, Applicants submit that original claim 18 distinguishes over Burns et al. The secondary reference of Lloyd et al. was not cited against claim 18, and does not overcome this deficiency in any event. Claims 16-17 and 19-21 depend from claim 18, and are distinguishable for at least the same reasons as claim 18, and further in view of the various features recited therein.

Independent Claim 1 and Dependent Claims 2, 5 and 22-25

Independent claim 1 has been amended to recite the following:

> providing a policy to a facility, the policy defining policy limits for transactions that normally require approval from a database at a time a transaction is requested, wherein the policy includes failsoft rules governing limited transaction approval to be used by the facility in the event of a communication failure between the facility and the database at a time of a transaction request;
>
> determining that a communication failure exists between the facility and the database at a time of a transaction request; and
>
> using, by a facility computing device, the failsoft rules to preliminarily grant approval for the requested transaction in response to determining that a communication failure exists between the facility and the database at a time of the transaction request.

None of the cited references teaches or suggests such a policy with failsoft rules to be used in the event of a communication failure, as recited. As discussed above, Burns et al. simply checks its cache whenever it receives a request. Burns et al. does not teach or suggest determining that a communication failure exists, or using failsoft rules in response, as recited in amended claim 1.

The secondary reference, Lloyd et al., does not overcome this deficiency. Lloyd et al. was only cited previously for features relating to relational databases.

For at least these reasons, Applicants submit that amended independent claim 1 distinguishes over the art of record. Claims 2, 5 and 22-25 depend from claim 1, and are distinguishable for at least the same reasons as claim 1, and further in view of the various features recited therein. For example, claim 24 recites a request to add one or more television channels to a television subscriber's subscription lineup.

Independent Claim 8 and Dependent Claims 9, 11 and 26

Amended independent claim 8 recites, among other features, the following:

> determining that a communication failure has delayed or disrupted the process of obtaining approval of the request from the authorization computer; and

in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules

As discussed above, Burns et al. consults its cache whenever a request comes in. It does not teach or suggest the caching system checking for a communication failure, or approving or denying the request according to failsoft rules in response to the communication failure, as recited in amended claim 8. Lloyd et al. does not overcome this, as it was only cited for relational database concepts.

For at least these reasons, Applicants submit that amended independent claim 8 distinguishes over the art of record. Claims 9, 11 and 26 depend from claim 8, and are distinguishable for at least the same reasons as claim 8, and further in view of the various features recited therein.

CONCLUSION

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: November 13, 2009

By: /Steve Chang/
Steve S. Chang
Registration No. 42,402

1100 13th Street, N.W., Suite 1200
Washington, D.C. 20005-4051
Tel: (202) 824-3000
Fax: (202) 824-3001